IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5354 OF 2004

Anil Rangrao Thorat ... Applicant

versus

The State of Maharashtra

and others ... Respondents

...

Mr.Umesh Mankapure, for Mr. R.V. More, for the Applicant.

Mr. A.S. Gadkari, A.P.P., for Respondent No.1.

Mr. Shirish Gupte, Senior Counsel, with Mrs. Rucheeta Dhuru, for Respondents Nos. 2 to 5.

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CORAM : A.M.KHANWILKAR,J.

3rd February 2005

P.C.:

1. After hearing Counsel for the parties, as I indicated my mind to allow the application, Mr. Gupte, on instructions, states that the Court may not record elaborate reasons which will eventually prejudice the Respondents at the stage

of bail application, if moved by the Respondents. Mr. Gupte on instructions states that the Respondents are inclined to surrender before the appropriate Court, so that their regular bail application can be considered by that Court on its own merits. Ordinarily, in view of the stand taken by the Respondents, I would have disposed of the application without recording any reason, but, for the nature of directions that I propose to issue, I think it necessary to make few broad observations, making it clear that the same shall not affect the merits of the case of the Respondents in the event they move application for bail before the appropriate Court.

2. Indeed, at the first blush, on reading the impugned judgment, it gives an impression that it is a considered judgment and in that view of the matter, no interference was warranted. However, on close scrutiny of the record, with the assistance of the Public Prosecutor, I am constrained to observe that the judgment in question cannot be described anything but perverse. I should say to the credit of Mr. A.S. Gadkari, the Assistant Public Prosecutor

that although the stand of the State Government, on instructions, is that the State was supporting the order in question, but on request made by the Court, he has placed before me relevant evidence, which compels me to make the observation that the order in question is perverse.

3. The learned Judge, while granting anticipatory bail in respect of the offence, which is indeed serious one under sections 307, 342, 147, 148, 149, 427, Indian Penal Code, and section 3 and 25 of the Arms Act, has observed, as can be discerned from the reasons from paras 4 to 7 of the judgment, that it will be unsafe to conclude that the Respondents Nos. 2 to 5 had active role or participated in the crime. For reaching at that conclusion, the learned Judge has only referred to the statement of Sarpanch, Sou. Chaya Mali. It is held that the statement of Sou. Chaya Mali is conspicuously silent about the presence of Respondents Nos. 2 to 5. This basis is completely belied by the supplementary statement of Sou. Chaya Mali, which was recorded on 21st November, 2004, which clearly refers to at least the role of Respondents Nos. 4 and 5

and their active participation in the crime. The learned Judge has then observed that the injury certificate indicates that there are seven injuries and six are simple; Only one injury is grievous, which is described as "Clean cut sharp cut injury over head i.e. scalp midline 8 cm. x 0.5 x 0.5 cm red bleeding present." Once again, this observation is clearly error apparent on the face of the record. The injury certificate dated 13th November 2004 produced by the Public Prosecutor clearly indicates that the doctor has certified Injuries Nos. 1 and 4 as grievous injuries. The learned Judge has only referred to injury No. 4 in his order and made no reference to injury No. 1, which is mentioned in the injury certificate as, "clean cut sharp edged injury over left foot c/or sum m 6 x 0.5 cm x 0.5 cm. red bleeding". Besides, there are in all eight injuries and not seven as mentioned by the learned Judge. These facts are required to be highlighed as it is on that basis the learned Judge proceeds to examine the matter. The learned Judge has then observed that if the Respondents were leading a group of 17 members of the village panchayat and all members of the same

group, then it is but natural that the Respondents were in a position to take assistance of their workers and they would not have appeared in person to take part in altercations. There is no reason why this assumption has been drawn by the learned Judge. The record, however, indicates to the contrary. Not only Sou. Chaya Mali has deposed about the involvement of at least Respondents Nos. 4 and 5, but there are other witnesses, who have consistently mentioned that fact, namely, Hanmant Rajaram Mali, Savitribai Rajaram Mali, Baburao Ramchandra Gawade, Milind Ramchandra, Chandrabhaga Ramrao Shinde, Raosaheb Ramchandra Mali, Raghunath Tukaram Ravate, Kondiba Kashinath Naikwadi, Manjula Eknath Shinde and Manohar Krishna Naikwadi. If this was the nature of evidence on record, there was no basis for the learned Judge to draw such assumption, especially in the matter which was of serious nature and the Court was called upon to consider anticipatory bail application. The learned Judge then observes that no satisfactory explanation is coming before the Court for what purpose the complainant had been to the house of Sou. Chaya Mali and what

ultimately led him to go and visit the house during night hours when more particularly the situation was tense in the village on the very ground of taking resignation of the members. Once again, this assumption is misplaced, and, in any case, could not have been the basis for granting anticipatory bail to the Respondents. On the other hand, all the witnesses, including Sou. Chaya Mali and her husband, Hanmant Rajaram Mali, have deposed about the reason for which the complainant had visited the house of Sou. Chaya Mali, at that hour, along with Baburao Ramchandra Gawade. The learned Judge then observes that if the only purpose for arresting the Respondents was for recovery of weapons, that is not a good ground for refusing anticipatory bail. This, in my view, is complete misunderstanding of the purport of section 438 of the Code. Assuming that this reason is on the basis of the earlier conclusion reached that there is no evidence whatsoever to implicate the Respondents in the crime, as mentioned earlier, the basis on which that conclusion is reached cannot be sustained and is contrary to the record. Even if this was an independent reason, it is well-settled that at

the stage of anticipatory bail, the Court will take into account factors specified in section 438 of the Code.

4. Be that as it may, the argument canvassed before this Court is that there is no evidence with regard to the involvement of Respondents Nos. 2 and 3. In that regard, the learned Judge himself in para 2 has referred to the fact that witnesses Subhash Sutar, Baburao Gawade and one more witness have confirmed the contents of the F.I.R. The F.I.R. clearly mentions about the role of Respondents Nos. 2 and 3. The F.I.R. has been lodged by the victim of the incident. That version is corroborated by Baburao Gawade, another victim, who has spoken about the involvement of the Respondents Nos. 2 and 3. However, the learned Judge has conveniently ignored this evidence and makes no reference in the entire discussion from para 4, which is the basis for grant of anticipatory bail to Respondents, including Respondents Nos. 4 and 5, who have been consistently named and their role described by all the witneses. The learned Judge

has also made no reference to the fact that there are antecedents against the Respondents Nos. 2 and 3 of offence of sections like 342, 363, 365, 506(II), 452, 504, 506, 427 and the like, which, it is stated, was matter of record.

5. Consequent to grant of anticipatory bail by the learned Judge to Respondents Nos.2 to 5, it is possible to say that, it must have affected the fair investigation of the case, when viewed in the context of submission canvassed on behalf of the complainant that the Respondents Nos.2 to 5 and Respondent No. 2 in particular are virtually controlling all the co-operative societies in the said vicinity. Indeed, investigation has been made over to another investigating agency, namely, L.C.B., Sangli, as is noted by the learned Judge. Taking overall view of the matter, in my opinion, the decision of the learned Judge cannot be sustained either on facts or in law, and, as mentioned earlier, to say the least, is an error apparent on the face of the record.

6. For the aforesaid reasons, in my opinion, it will be inappropriate to allow the matter to be heard by the same Judge. Accordingly, while allowing this application, it is directed that the Respondents Nos. 2 to 5 shall surrender before the investigating officer and move application for regular bail, which will have to be considered by some other Judge, if available at Islampur, or to be so assigned by the District Judge, Sangli.

7. Mr. Gupte, for Respondents Nos. 2 to 5, submits that the Respondents Nos. 2 to 5 would require some reasonable time to surrender, so as to organise their affairs. I see no reason to grant time till 14th February 2005 as prayed. The Respondents shall surrender before the investigating officer on or before 6th February 2005, failing which it will be open to the investigating officer to proceed against the Respondents in accordance with law.

8. It is once again made clear that the bail application to be filed by the Respondents, consequent to arrest, will have to be considered

on its own merits in accordance with law, uninfluenced by the observations made in this order, which are limited for the purpose of spelling out why this Court was required to direct the hearing of bail application by some other independent Judge.

9. Copy of this order be marked to the Registrar-General of this Court for being placed before the appropriate authority in view of the observations made in respect of the judgment in question.

(A.M.KHANWILKAR,J.)